IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7595 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

VADANSINGH MADANSINH PARMAR

Appearance:

1. Special Civil Application No. 7595 of 1997

MR AMIT M PANCHAL for Petitioner No. 1

MR SK BUKHARI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/10/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Amit Panchal for the petitioner and Mr. Bukhari for the respondent workman. In this petition under Article 227 of the Constitution of

India, the petitioner department has challenged the award made by the labour court, Himatnagar in Reference No. 477 of 1996 dated 25th May, 1997 wherein the labour court has granted reinstatement with continuity of service with full back wages from 31st July, 1992 in favour of the present respondent. Initially, this court stayed the operation of the award and the statement of the learned advocate Mr. Bukhari was recorded that the respondent will not press for wages under section 17B of the ID Act till the final disposal of this petition. On that condition, hearing of the present petition was expedited. Respondent has filed affidavit in reply to the present petition.

Learned advocate Mr. Panchal raised the contention that the respondent was appointed or engaged on the basis of contingency and he was not engaged on muster but was engaged on temporary basis as a labour and his service was for a temporary period. According to Mr. Panchal, specific duration was mentioned in the order of appointment and after completion of that work, services of the respondent were terminated by the petitioner. As per the Government Circular dated 8.2.1993, no daily wager was appointed on long term/short term after 3.2.1987 and on that basis, the service of the respondent was terminated. Learned advocate Mr. Panchal also submits that the respondent had not completed 240 days continuous service and his case was not a case of retrenchment and, therefore, it was not necessary for the petitioner to comply with the provisions of section 25-F of the I D Act, 1947. Therefore, labour court has committed gross error in granting relief in favour of the workman. Learned advocate Mr. Bukhari has, on the other hand, submitted that the labour court was right in coming to the conclusion on the basis of the documents and oral evidence led before it. According to Mr. Bukhari, the labour court was right in coming to the conclusion that the completion of 240 days was proved by the workman and the labour court was also right in holding that the petitioner has not complied with sec. 25F of the ID Act. He also submits that from 1st October, 1991 to 31st July, 1992, the workman had completed 241 days with the petitioner. He also submits that the gainful employment of the workman was not proved by the petitioner before the labour court and in cross examination of the workman also, no question to that effect was asked by the petitioner and, therefore, the labour court was justified in granting full back wages for the intervening period.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question made by the labour court. The

respondent was appointed on the post of watchman w.e.f. 1.10.1991 and his service was terminated on 31st July, 1992. Before the labour court, the respondent was examined vide Exh. 12. On behalf of the petitioner, one Mr. PR Desai was examined before the labour court. Thereafter, the labour court considered the evidence on record. At Annexure A, petitioner has produced statement showing working days of the respondent. Date of termination is 31st July, 1992. Preceding 12 months, from 31st July, 1992, if the working days of the workman are calculated as per these two statements, it is clear from these documents itself that the workman had completed more than 240 days continuous service from June, 1991 to 31st July, 1992. Same aspect has been examined by the labour court in para 9 of the impugned award and the labour court has come to the conclusion that looking to the evidence produced by the petitioner, the workman had completed 240 days continuous service with the petitioner. Before the labour court, the petitioner had produced pay slips alongwith the statement of working days and looking to that, the labour court had come to the conclusion that the workman has completed more than 240 days continuous service. After considering these aspects, the labour court examined as to whether the petitioner has complied with the provisions of section 25F of the ID Act, 1947 or not before terminating the service of the respondent. It was not the case of the petitioner before the labour court that the petitioner had complied with the provisions of sec.25F of the ID Act before terminating the service of the workman. Even before this Court also, learned advocate Mr. Panchal has not submitted that the petitioner has complied with sec.25F of the ID Act prior to termination of service of the workman. Before this court, it was submitted by the learned advocate that it was not necessary for the petitioner to comply with the provisions of sec.25F of the ID Act, 1947. Therefore, it is clear that there was no compliance of section 25F of the ID Act, 1947 before termination of the service of the respondent. Once service of the workman is terminated without complying with the mandate of section 25F of the ID Act, 1947, such termination would become void ab initio for want of compliance of sec. 25F of the ID Act, 1947. This aspect was considered by the labour court in para 12 of the award. As regards the defence raised by the petitioner before the labour court that the service of the respondent was terminated in view of the GR dated 8th February, 1993, the labour court pointed out that since the service of the workman was terminated on 31st July, 1992, there was no question to follow the circular dated 8th February, 1993 since it was issued after

termination of service of the workman.Therefore, the labour court ultimately come to the conclusion that the termination of service of the workman was bad and void ab initio for want of compliance of sec. 25F of the ID Act.

In Mohan Lal V. The Management of M/s Bharat Electronics Ltd. (AIR 1981 SC 1253) the Supreme Court has specifically held that where pre-requisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. Recently also, in Krishna Bahadur and M/s. Purna Theatre and others [2004 (103) FLR 146], the apex court has held that the provisions of section 25F of the ID Act, 1947 are imperative in character and it postulates the fulfillment of three conditions. It was observed by the apex court as under in para 10 of the Judgment :

"It is neither in doubt nor in dispute that the provision of section 25-F (b) is imperative in character. The provisions postulates the fulfillment of the following three conditions:

(i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;
(ii) Payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and
(iii) Notice to the appropriate Government in the prescribed manner.

The requirement to comply with the provision of section 25-F (b) has been held to be mandatory before retrenchment of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio.

In Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. V. The Management [1980 (40) FLR 474 (SC)], whereupon the reliance had been placed by the Division Bench, this Court held;
"That apart, if there be non compliance with section 25-F, the law is plain that retrenchment is bad..."

Therefore, considering the facts of the present case and also considering the aforesaid recent decision of the apex court, the labour court was right in

examining the matter in its proper perspective and according to my opinion, the labour court has not committed any error in granting the relief in favour of the workman. There is no any procedural irregularity committed by the labour court while granting such relief in favour of the workman. Learned advocate Mr. Panchal has not been able to point out any infirmity in the award of the labour court. The respondent is a workman as defined by section 2(s) of the ID Act, 1947 and was entitled for the protection of section 25-F of the ID Act which, admittedly, was not given to him by the petitioner and such non compliance of sec.25F of the ID Act, 1947 has rendered the termination of his service void ab initio. In view of that, the labour court was right in granting the relief in favour of the petitioner. Once the termination has been rendered void ab initio for want of compliance of section 25F of the ID Act, then, the workman is entitled for the normal and natural relief of reinstatement with full back wages and continuity of service and it is necessary for the employer to prove the exception in respect of the back wages. In this case, the employer has not led any oral evidence nor has produced any documentary evidence before the labour court for establishing the gainful employment of the workman during the intervening period. Considering the evidence of the workman at Exh.12 before the labour court, the labour court was right in granting full back wages to the workman. According to my opinion, the labour court has not committed any error warranting interference of this court under Article 227 of the Constitution of India. Therefore, there is no substance in this petition.

Accordingly, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas